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EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
TOM FORESE, CHAIRMAN
BOB BURNS
BOYD DUNN
DOUG LITTLE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	DOCKET # E-01345A-16-0036 **EXCEPTIONS TO THE JULY 26, 2017 RECOMMENDED OPINION & ORDER** + **MOTION FOR CLARIFICATION**
IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE COMPANY	DOCKET # E-01345A-16-0123

Warren Woodward ("Woodward"), Intervenor in the above proceeding, takes exception to the Resolution expressed at § V.c.ii.10, page 53, of the July 26, 2017

Recommended Opinion and Order ("ROO"). The Arizona Corporation Commission ("ACC") lacks the constitutional or statutory authority to force customers into certain rates while denying them access to other rates, not for 90 days or even 90 minutes. The Arizona State Constitution (at Article 15) and Arizona Revised Statutes (at Title 40) give the ACC the power to determine just and reasonable rates. That's it. The power to force customers into certain rates while denying them rates available to others is not delegated to the ACC. Such power is not found anywhere at either Article 15 or Title 40.

Discussing these illegal 90 day forced rates for new customers, ACC Utility Division director Elijah Abinah ("Abinah") stated at this rate case's hearing:

> When a new customer comes into APS service territory, there's no information, there's no usage, there's no data. **So we don't know what rate structure to put them on.**
> (Tr. at 1268:14-17, emphasis added)

Abinah exceeded his authority. Neither he nor the ACC commissioners have any authority to put customers on any rate structure. In addition to lacking the authority necessary to implement the 90 day captivity period, A.R.S. § 40-334 prohibits such discrimination by companies that the ACC regulates. The ACC needs to enforce the law, not help APS break it.

The ROO states:

> Mr. Woodward asserts that the 90-day trial period for new customers to take service under TOU or demand rates is unjust because he believes they are unaffordable for some customers, and that it should be removed.
> (ROO, p. 49, lines 2 to 4)

Woodward does not just "believe" those rates are unaffordable for some customers. Woodward proved the rates are unaffordable by filing published studies on those rates. In other words, Woodward supported his 'beliefs' with evidence, something no proponent of the 90 day captivity period has done in this rate case. The proponents have not met their burden of proof. They have only repeated conclusory allegations *ad nauseum*. In actual fact, it is the proponents who are acting on nothing but belief, and that is not a just or reasonable way to make policy.

The 90 day captivity period is social engineering at its worst. It is rich people experimenting on low-income people. As the studies I filed proved, those who can least afford it are the ones who will be most financially punished. From Woodward 6:

> *Peak demand and the 'family peak' period in Australia: Understanding practice (in)flexibility in households with children* is a study of TOU rates that was published in 2015 in the journal, *Energy Research & Social Science* (http://www.sciencedirect.com/science/article/pii/S2214629615300414). The study verifies my assertions regarding TOU and concludes:
>
> > From our analysis we conclude that TOU tariffs are unlikely to effectively reduce peak period electricity consumption in households with children and may have inequitable financial and/or social impacts for these households.
>
> Similarly, a study published in 2014 in the journal, *Technology Analysis & Strategic Management*, had this to say about the negative social impacts and financial punishing that certain types of people who need to use electricity during peak hours will suffer:
>
> > Peak pricing was seen as inequitable, burdening the less affluent, the less healthy, families and working mothers. Adverse societal outcomes may result from peak pricing, with

> potential for disruption of time-dependent household routines including the socially vital ritual of family mealtimes. Householders perceived their peak-time consumption to be determined by society's temporal patterns and not within their control to change.

And:

> A disincentive to eat a cooked meal when needed and convenient may have adverse impact on the health and well-being of already disadvantaged groups. Within the households interviewed, it appeared that attempting to deal with peak tariffing would cause particular difficulties for working mothers. Carrying the responsibility on behalf of the household for most domestic tasks, working mothers explained that many tasks had to be completed between coming home from work and going to bed, including cooking, washing up and washing clothes which could be needed for school the next day. This gave little or no scope to vary the time in which chores were completed.
> (*A qualitative study of perspectives on household and societal impacts of demand response*, http://www.tandfonline.com/doi/full/10.1080/09537325.2014.974529)

Where are the proponents' studies that show the opposite? Those are entirely missing from this rate case.

The ROO states:

> After examination of the evidence and the legal arguments on this contested issue, we find that the 90-day trial period for new customers as set forth in the Settlement Agreement is in the public interest. Educating customers about the energy efficiency effects of both time-differentiated and demand-differentiated rate plans will encourage customers to be cognizant of efficient energy use.
> (ROO, p. 53, lines 2 to 5)

That is a classic *non sequitur* misdirection. Denying customers the choice of rates that

others in the same customer class have, forcing customers on rates they do not want and that will financially harm them is *not* "educating customers." It is denying customers choice and forcing them on rates they do not want and that will financially harm them. Period. Additionally, the assumption that customers, especially customers on tight budgets, do not know how to conserve energy is incredibly condescending. It is elitism. Rich people can afford to waste electricity. Low income people cannot. So they know very well how to conserve. A multitude of public comments submitted to this rate case docket show that many customers have already cut their electricity usage to the point where there is nothing left to cut except maybe to shut off their refrigerators and water heaters altogether.

These very same customers will be punished severely by the increase in Basic Service Charges ("BSC") that the ROO endorses by the Resolution at § V.c.i.13, page 46. No matter how much electricity they conserve, they will be trapped by massive increases in the BSC. Such entrapment is neither just nor reasonable, so Woodward takes exception to that Resolution also.

In his filings in this case, Woodward documented many instances where APS was not truthful. Woodward therefore takes exception to the Settlement Agreement's proposal at § 27.1 to give APS 5 million dollars to "educate" customers. This proposal was not addressed in the ROO. The proposal provides "stakeholders with an opportunity for review and comment on the draft plan prior to completing its [APS's] final plan." But

there is nothing that says APS has to act on any comments. There is no stipulation for effective oversight of APS. So basically the $5M is a carte blanche gift to APS, and that is neither just nor reasonable.

Lastly, Woodward takes exception to the Resolution at § III.e.xvii, page 20 of the ROO that upholds the settlement process in general. The ROO states that "... there is no support in the record for a finding of impropriety in the settlement process ...." (p. 20, line 18) Whether there was impropriety is not a central issue. As Woodward has pointed out several times in previous filings, by its very design the settlement process is inherently fatally flawed – impropriety or no impropriety. The secret settlement meetings are *not* evidentiary, and are thus an avoidance of due process. Using the rate increase as an example that can be applied to other rate case issues as well, the settlement process did not evaluate whether the increased rates are just and reasonable. Instead, the responsibility to evaluate whether the increase is just and reasonable was avoided and deferred to the "majority rule" of Intervenors. The notion that if a majority of Intervenors support the settlement process's resulting Agreement then it must be just, reasonable and in the public interest is a perversion of the democratic principle of majority rule because, for the most part, Intervenors are paid to be there and to represent only the narrow interests they are paid to represent. Due to the time and money it takes to intervene, as well as the fact that the process is not transparent (no media is allowed), the public is effectively shut out of the process. And no, RUCO does not represent the

public. Using RUCO's own statements, Woodward proved that in previous filings. Even the commissioners, the ones for whom the public voted to represent them, are not there, having abdicated their deliberative responsibility to what is *not* a "broad range of interests" (ROO, p. 20, line 17) but a narrow range of special interests conducting a backroom deal that has been tarted up as noble and legitimate.

Woodward has made the preceding points about the settlement process throughout this rate case. No Settlement Agreement proponent nor this ROO have debunked them. They are undisputed. So obviously Woodward also takes exception to the ROO's adoption of the Settlement Agreement at § VI, page 59. As well, it is preposterous and misleading for § VI to tout "a base rate increase substantially less than originally requested by APS" as a customer benefit and reason to adopt the Agreement. Just because APS asks for something does not mean APS is entitled to it, or any part of it. There is no customer benefit in APS not getting all it asked for since it's so obvious the settlement game is *ask for twice as much and settle for half*, and ACC Staff originally called for no increase at all. According to § VI "increased rate options for residential customers" is supposed to be another customer benefit – unless of course if you are a new customer, in which case the rate options are actually *decreased* to APS's benefit. Rate options with extremely higher Basic Service Charges are *not* a customer benefit either.

MOTION FOR CLARIFICATION

Woodward seeks clarification of the ROO's uncommon provision to bifurcate the so-called "issues surrounding the Settlement Agreement Proposed AMI Opt-Out program" as expressed at page 101, lines 5 through 8, and elsewhere throughout the ROO. Will another ROO be issued? Will the separate decision be made at an Open Meeting or a Staff Meeting? Woodward would appreciate any additional information that would explain what exactly is involved.

RESPECTFULLY SUBMITTED this 4th day of August, 2017.

By 

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Original and 13 copies of the foregoing hand delivered on this 4h day of August, 2017 to:

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